

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE**

FIRST APPEAL NO. 1031 OF 2004

M/s. Dhariwal Bottle Trading Co. ... Appellant

V/s

Maharashtra State Warehousing Corpn.
& anr. ... Respondents

And

Tandon Metals Pvt. Ltd. ... Applicant/
Intervener.

Shri Kantawala i/by Uday Warunjikar for the appellant.

Shri P.K. Dhakephalkar with Mr. Swapnil Bangur i/by
Meghraj & Associates for the respondent No.1.

Shri A.V. Chatuphale for respondent No.2.

CORAM: P.V. KAKADE, J.

DATED: 5TH OCT., 2004

Not on board.

P.C.:

1. Heard learned counsel for all the concerned parties.
2. The advocate for the appellant and applicant have filed the minutes of order. Counsel for the respondent No.2 Maharashtra State Warehousing Corporation raises objection in respect of the warehousing charges. Warehousing charges are to be paid by the Customs Department, except for the goods pertaining to the applicant Tandon Metals Pvt. Ltd. In that regard, it is noted that the minutes of the order shall be subject

to the question of payment of that charges and hence that issue is left open.

3. The minutes of order are as under :-

(1) The parties have agreed that no reasons be given for passing the following order:

(2) Impugned order dated 14th Sept., 2004 is set aside.

(3) Goods, namely, lead concentrate described in Bond No.MS-OS-84 as weighing 2743 Metric Tons sold pursuant to auction notice dated 10th February 2004, and lying in Godown No.5 situate at Village Kolkhe, Panvel, (hereinafter called "subject goods") are released from attachment levied by the Court of the Civil Judge, Senior Divn., Panvel, pursuant to execution of decree dated 26th February, 2004, in Special Civil Suit No. 64 of 2001. (1) In view of these aspects, the first appeal stands disposed of in terms of order recorded above with no order as to costs.

(4) The respondent No.1 is at liberty to hand over the subject goods to the appellant.

(5) The appellant shall cooperate and permit

the respondent No.1 to hand over the subject goods to the applicant.

(6) The appellant and the applicant have informed this Hon'ble Court that the applicant has paid to the appellant an amount of Rs.10,00,000/- by Pay Order No.0017000 of Corporation Bank, dated 4th October 2004. The same has been paid to the appellant towards damage caused to the godowns of the appellant. The applicant shall not in any circumstances claim refund of the amount of Rs.10,00,000/-.

(7) Goods under other bonds are lying in godowns No.1 and 3 at village Kolkha, panvel (hereinafter called "other goods"). The same have also been attached vide attachment dated 21st August 2004, in execution of the decree dated 26th June, 2002, in Special Civil Suit No. 64 of 2001. The appellant and respondent No.1 to cooperate with each other and shift the other goods to One Godown.

(8) Respondent No.1 shall not object to the sale of the other goods pursuant to the attachment, subject however to the payment of the Customs duty thereon from the sale proceeds of the other goods.

(9) Respondent No.1 is entitled to receive its Custodian/Warehousing charges in respect of the subject goods and the other goods. Respondent No.1 shall pay to the appellant 60% of the Custodian Charges/Warehousing Charges in respect of the subject goods and 100% in respect of the other goods in part satisfaction of the decree dated 26th June, 2002.

(10) The appellant is at liberty to execute the decree dated 26th June, 2002 by attaching other properties/amounts belonging to respondent No.2, lying in the hands of the Commissioner of Customs, if any.

(11) Respondent No.1 shall not have any claim to the use, occupation and possession of the suit property, subject matter of Special Civil Suit No. 64 of 2001.

(12) No order as to costs.

In view of these aspects, the first appeal stands disposed of in terms of order recorded above with no order as to costs.

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

CIVIL APPLICATION NO. 3492 OF 2004
IN
FIRST APPEAL NO. 1031 OF 2004

Office Notes, Office Memoranda
of of Coram, appearances, Court's
orders and Registrar's orders : Court's or Judge's orders

Shri Kantawala i/by Uday Warunjikar for the
applicant.

Shri P.K. Dhakephalkar with Mr. Swapnil
Bangur i/by Meghraj & Associates for the
respondent No.1.

Shri A.V. Chatuphale for respondent No.2.

CORAM: P.V.KAKADE, J.

DATED: 5TH OCT., 2004

Not on board.

P.C.:

1. Heard learned counsel for all the
concerned parties.

2. In view of the facts and circumstances,
the application is made absolute in terms of
prayer clauses (a) & (b) and stands disposed
of.

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